



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,952	03/22/2004	Celso J. Bagaioian	ACI-003	2852
23410 7590 11/12/2009 Vista IP Law Group LLP 2040 MAIN STREET, 9TH FLOOR IRVINE, CA 92614				
EXAMINER				
YABUT, DIANE D				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
11/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/806,952

**Applicant(s)**

BAGAOISAN ET AL.

**Examiner**

DIANE YABUT

**Art Unit**

3734

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-10 and 21-30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant's arguments filed 10/20/2009 have been considered but are not persuasive.

Applicant argues that the sealing device of Epstein has a tubular member 111 which is not coupled to the delivery device 81, as seen in Figures 5A-5C since 111 is a conventional over-lying sheath, and that the sealing compound 29 is not delivered from and through the tubular member 111 lumen but instead through the tubular member 22, as seen in Figure 2. However, since tubular member 111 is "over-lying" or disposed about the tubular member 22 and the delivery device 81, the tubular member 111 is therefore considered to be coupled to the other elements of the device, albeit not affixed, as they are joined and work as a unit in Figures 5A-5C. Since the sealing compound is delivered through the lumen of the tubular member 22, which is coaxially within tubular member 111, it is considered to be delivered through the tubular member lumen and out the distal end of the tubular member (Figures 2 and 5A-5C).

Applicant also generally argues that Belef does not teach retracting the tubular member proximally relative to the occlusion member. The examiner clarifies that the occlusion member in Belef is in fact element 5, not element 14, as applicant asserts. The occlusion member and the tubular member are already disclosed by Epstein. Epstein lacks the retraction mechanism that retracts one element (tubular member) while delivering another element (sealing compound). The teaching of Belef demonstrates the benefit of simultaneous advancement and disengagement of a lock to retract a member. The examiner clarifies that the delivery device and plunger 81 of Epstein would be modified to not only advance the sealing compound, but to also disengage a lock to retract tubular member 111 of Epstein, as taught by the retraction assembly 180 of Belef. It is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. The sealing device of Belef teaches facilitated operation and reduced steps for sealing and occluding a puncture involving advancement and retraction mechanisms, and therefore it would occur to one of ordinary skill in the art to modify the device of Epstein with the teaching of Belef.

Lastly, applicant argues that Gershony does not teach a chamber or a reservoir filled with inflation media, or a piston, but rather an inflation port 77, as seen in Figure 8. The examiner maintains and clarifies that the inflation port 77 suggests an obvious modification of receiving an inflation device that would consist of a reservoir that holds the inflation medium and an actuator or piston to deliver the medium to the inflation lumen 78, since it is old and well known in the art. When a piston of the inflation device (which is coupled to inner member 73 via the expandable member and inflation port at 72) is pulled proximally after filling the expandable member with inflation fluid, the inner member 73 is also pulled proximally as the expandable member expands, as more clearly seen in Figures 3-5 of Gershony, and is pulled distally when the expandable member is deflated.